

DIVISION III

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
BRIAN S. MILLER, Judge

CACR06-574

February 7, 2007

ADRIAN GRISSOM

APPELLANT

v.

AN APPEAL FROM THE COLUMBIA  
COUNTY CIRCUIT COURT  
[CR-2005-43]

STATE OF ARKANSAS

HONORABLE LARRY W. CHANDLER,  
JUDGE

APPELLEE

AFFIRMED

**BRIAN S. MILLER, Judge**

A Columbia County jury found appellant Adrian Grissom guilty of possession of cocaine, resisting arrest, and fleeing by foot. He was sentenced to serve fifteen years in the Arkansas Department of Correction. On appeal, Grissom argues that the trial court erred in admitting a lab report from the state crime lab into evidence. Grissom also challenges the sufficiency of the evidence to support his possession-of-cocaine and resisting-arrest convictions. We affirm.

On February 3, 2005, Officers Robert Philson and Jeffrey Jones of the Magnolia Police Department were on routine patrol when they observed a vehicle without a license plate. The officers initiated a traffic stop and called for assistance. Grissom exited the

vehicle from the driver's side, while the passenger remained inside the vehicle. Grissom began walking toward the officers but was ordered back into the vehicle. Officer Philson then approached the passenger's side of the vehicle, while Officer Jones approached the driver's side. When Officer Jones asked Grissom for his driver's license, Grissom replied that his license was suspended. A call to dispatch confirmed that Grissom's driver's license was suspended and that Grissom had several outstanding warrants. Meanwhile, Sergeant Glen Proctor arrived to assist the officers.

Grissom was informed that he was under arrest, and he was asked to step out of the vehicle. Officer Jones attempted to handcuff Grissom but Grissom made a sudden movement and attempted to flee. In response, Officer Jones and Sergeant Proctor grabbed Grissom by the coat. A scuffle ensued that resulted in Grissom and the two officers falling to the ground. Grissom managed to get up and work his way free of his jacket. He then fled on foot. Officer Jones pursued Grissom on foot, while Sergeant Proctor pursued Grissom in his patrol car.

As Officer Jones and Sergeant Proctor pursued Grissom, Officer Philson radioed for additional assistance. Officer Judd Mitchell responded to the call. When Officer Mitchell arrived, he observed Grissom, followed by Officer Jones, running through a yard toward Officer Mitchell. Officer Mitchell stopped his vehicle and ran toward Grissom. Grissom turned and ran back toward Officer Jones. When Officer Jones attempted to grab Grissom, Grissom knocked Officer Jones off balance, causing him to fall a second time. Despite his

fall, Officer Jones managed to grab Grissom. Grissom continued running and managed to drag Officer Jones several feet. When Grissom eventually freed himself of Officer Jones's grip, he found his path blocked by Officer Mitchell and Sergeant Proctor's patrol car. Officer Mitchell tackled Grissom and managed to subdue him. After Grissom was subdued, he was handcuffed and placed in a patrol car.

After apprehending Grissom, one of the officers observed a small plastic bag on the ground. The bag contained a white substance. The bag was retrieved and transported to the police station. Analysis by the state crime lab would later reveal that the bag contained 2.2929 grams of cocaine.

On March 16, 2005, the State filed an information charging Grissom with possession of cocaine, resisting arrest, fleeing on foot, and driving on a suspended license. At Grissom's January 25, 2006 jury trial, the officers involved in apprehending Grissom all testified as to the difficulty they experienced when they attempted to take him into custody. Officer Philson also testified that the falls sustained by Officer Jones and Sergeant Proctor placed them at risk of sustaining serious injury.

During his testimony, Officer Jones said that, when he fell the second time, he sustained "a half dollar size [scrape]" to his leg. Officer Jones further testified that, after apprehending Grissom, he observed a small plastic bag on the ground less than a foot from where Grissom was apprehended. He said that, at the time, only Grissom and the officers were in the area.

Sergeant Proctor testified that he observed Officer Mitchell retrieve a small bag from the area. Proctor admitted that he had not seen Grissom in possession of the bag; however, he stated that no one else was in the area during the time in question.

Officer Mitchell testified that he saw Grissom throw something to the ground just before being tackled. Mitchell said that, after apprehending Grissom, he went back and retrieved a plastic bag containing a substance that appeared white in color. Officer Mitchell said he then placed the bag in his pocket and transported it back to the police station. Once at the police station, Officer Mitchell took the bag to Detective Johnny Hayes. He said that, after he and Detective Hayes performed a field test on the substance inside the bag, he turned the bag and its contents over to Detective Hayes. He identified State's Exhibit One as the bag and the substance. During his testimony, Officer Mitchell stated that the bag looked different; however, he believed that it was the same bag that he gave to Detective Hayes. He explained that when he gave the bag to Detective Hayes, the plastic was tied in a knot and the substance was "more rock like."

Detective Johnny Hayes testified that he obtained State's Exhibit One from Officer Mitchell and sent it to the crime lab for analysis. He said that following the lab's analysis of the contents of the bag, he received a report from the crime lab indicating that the bag contained cocaine.

During Detective Hayes's testimony, Grissom objected to the admission of the crime lab report. He argued that there was no indication that the lab report was attested to by the

director, assistant director, or deputy director. He also argued that there was no indication that the person who signed the lab report had the authority to do so. The trial court disagreed with Grissom's arguments and ruled that the lab report was admissible.

The State rested after Detective Hayes's testimony, and Grissom moved for directed verdict. As to the resisting-arrest charge, he argued that there was no evidence that he knowingly used physical force. As to the possession-of-cocaine charge, he argued that there was no evidence that he tossed the bag that was introduced as State's Exhibit One. The trial court denied Grissom's motions. Grissom then took the stand and denied throwing the bag onto the street. Afterwards, Grissom rested and renewed his motions for directed verdict, which the trial court again denied.

Although they are his second and third arguments on appeal, due to double-jeopardy concerns, we begin by first addressing Grissom's arguments challenging the sufficiency of the evidence to support his possession-of-cocaine and resisting-arrest convictions. *See Barnes v. State*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Mar. 1, 2006). We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. *Id.* In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only if there is substantial evidence to support the verdict. *Boveia v. State*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Feb. 15, 2006). Substantial evidence, whether direct or indirect, is that which is forceful enough to compel reasonable minds to reach a conclusion one way or another without resorting to speculation or conjecture. *Id.*

Grissom first argues that there was insufficient evidence to find him guilty of possession of a controlled substance. It is unlawful for any person to possess a controlled substance. Ark. Code Ann. § 5-64-401 (c) (Repl. 2005). In order to convict a person of possession of a controlled substance, the State must show that the defendant exercised control or dominion over it. *Dodson v. State*, 358 Ark. 372, 191 S.W.3d 511 (2004).

Grissom specifically argues that there was insufficient evidence placing the plastic bag in his possession. The State need not prove that the accused physically possessed the contraband in order to sustain a conviction for possession of a controlled substance if the location of the contraband was such that it could be said to be under the dominion and control of the accused. *George v. State*, 356 Ark. 345, 151 S.W.3d 770 (2004). Constructive possession may be established by circumstantial evidence. *Id.* When seeking to prove constructive possession, the State must establish that the defendant exercised care, control, and management over the contraband. *Saul v. State*, 92 Ark. App. 49, 195 S.W.3d 370 (2005). This control can be inferred from the circumstances, such as the proximity of the contraband to the accused, the fact that it is in plain view, and the ownership of the property where the contraband is found. *McKenzie v. State*, 362 Ark. 257, 195 S.W.3d 370 (2005).

Here, there was testimony establishing that the contraband was found less than one foot from where Grissom was apprehended and that no one else was in the area other than the arresting officers. In addition, Officer Mitchell testified that he saw Grissom throw something to the ground. He also said that, after apprehending Grissom, he went to where

he saw Grissom throw the object and found the plastic bag currently at issue. Grissom's testimony contradicted Officer Mitchell's testimony, in that Grissom denied dropping the plastic bag. It is the jury's duty to weigh the evidence, and the jury may believe all or only a part of any witness's testimony. *Mosley v. State*, 87 Ark. App. 127, 189 S.W.3d 456 (2004). Furthermore, a jury is not required to believe the defendant's version of events because he is the person most interested in the outcome of the trial. *Turbyfill v. State*, 92 Ark. App. 145, \_\_\_ S.W.3d \_\_\_ (2005).

Based on the evidence, it is clear that the jury chose to believe the officers' version of events. In light of this, based on the proximity of the contraband to Grissom and the officers' testimony, there is sufficient evidence to find that Grissom was in possession of the contraband.

Grissom also takes issue with the identification of the controlled substance introduced at trial. Officer Mitchell testified that the bag introduced at trial looked different from the bag he found at the scene in that the bag he found was tied in a knot and the substance was "more rock like." Officer Mitchell also testified that he believed the bag introduced at trial was the same bag that he had turned over to Detective Hayes. The jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Garner v. State*, 355 Ark. 82, 131 S.W.3d 734 (2003). The jury apparently believed Officer Mitchell's testimony that the bag he found at the scene was the bag introduced at trial. We, therefore, affirm this point.

Next, Grissom challenges the sufficiency of the evidence to support his resisting-arrest conviction. Arkansas Code Annotated section 5-54-103(a)(1) (Repl. 2005) provides that “a person commits the offense of resisting arrest if he or she knowingly resists a person known by him or her to be a law enforcement officer effecting arrest.” Grissom specifically argues that there is no evidence establishing that he acted knowingly. A person acts knowingly with respect to the person’s conduct or the attendant circumstances when he or she is aware that his or her conduct is of that nature or that the attendant circumstances exist. Ark. Code Ann. § 5-2-202 (2) (A) (Repl. 2006). A criminal defendant’s intent or state of mind is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Watson v. State*, 358 Ark. 212, 188 S.W.3d 921 (2004). Since intent cannot be proven by direct evidence, members of the jury are allowed to draw upon their common knowledge and experience to infer it from the circumstances. *McElyea v. State*, 87 Ark. App. 103, 189 S.W.3d 67 (2004). Moreover, because of the obvious difficulty in ascertaining a defendant’s intent or state of mind, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Watson v. State, supra*.

The evidence in this case clearly demonstrates that, upon being told he was under arrest, Grissom took evasive steps to avoid being arrested. Based on this evidence, the jury could infer that Grissom acted knowingly. We, therefore, affirm Grissom’s conviction for resisting arrest.

Grissom finally argues that the trial court erred in admitting the crime lab report into evidence. He argues that the lab report was inadmissible because an analyst attested to the report, and that the report did not contain the attestation of the executive director of the state crime laboratory or anyone designated as his or her assistant, associate, or deputy, as required by Ark. Code Ann. § 12-12-313(a).

Section 12-12-313 (Repl. 2003), provides that:

(a) The records and reports of autopsies, evidence analyses, drug analyses, and any investigations made by the State Crime Laboratory under the authority of this subchapter shall be received as competent evidence as to the matters contained therein in the courts of this state subject to the applicable rules of criminal procedure when duly attested to by the Executive Director of the State Crime Laboratory or his or her assistants, associates, or deputies.

(b) Nothing in this section shall be deemed to abrogate a defendant's right of cross-examination if notice of intention to cross-examine is given prior to the date of a hearing or trial pursuant to the applicable rules of criminal procedure.

(c) The testimony of the appropriate analyst may be compelled by the issuance of a proper subpoena, in which case the records and reports shall be admissible through the analyst who shall be subject to cross-examination by the defendant or his or her counsel, either in person or via two-way closed-circuit or satellite-transmitted television pursuant to subsection (e) of this section.

(d)(1) All records and reports of an evidence analysis of the laboratory shall be received as competent evidence as to the facts in any court or other proceeding when duly attested to by the analyst who performed the analysis.

(2) The defendant shall give at least ten (10) days' notice prior to the proceedings that he or she requests the presence of the analyst of the laboratory who performed the analysis for the purpose of cross-examination.

(3) Nothing in this subsection shall be construed to abrogate the defendant's right to cross-examine.

Grissom argues that the crime lab report concerned drug analysis as defined in subsection (a) and that subsection (a) requires that the lab report be attested to by the executive director of the state crime laboratory or anyone designated as his or her assistant, associate, or deputy. He further argues that an analyst was the only person attesting to the lab report and therefore the lab report did not meet the requirements of the statute. In response, the State cites *Willis v. State*, 309 Ark. 328, 829 S.W.2d 417 (1992), in support of its argument that crime-lab analysts are considered assistants, associates, or deputies of the director.

Our supreme court has noted that trial courts have broad discretion regarding evidentiary rulings and when reviewing a ruling on the admissibility of evidence, the trial court should not be reversed absent an abuse of discretion. *Simmons v. State*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Apr. 19, 2006). Although the supreme court, in *Willis*, did not expressly hold that analysts are considered assistants, associates, or deputies of the director of the state crime laboratory pursuant to section 12-12-313(a), the court clearly held that an attestation by the analyst is sufficient to satisfy the requirements of section 12-12-313(a). For this reason, we hold that the trial court did not abuse its discretion when it admitted the laboratory report into evidence and, accordingly, we affirm.

Affirmed.

ROBBINS and GLOVER, JJ., agree.

